

USDA
CALIFORNIA

2001 SEP 25 P 12:41

PACA Docket No. D-01-0008

RECEIVED

Decision Without Hearing By Reason of Default

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §499a et seq.; hereinafter referred to as the "Act"), instituted by a Complaint filed on February 1, 2001, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture.

The Complaint alleges that during the period September 12, 1998, through September 15, 1999, Respondent, Bova Fruit Co., Inc., Wholesale Fruits & Vegetables, (hereinafter "Respondent") failed to make full payment promptly to 79 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,935,386.99 for 604 lots of fruits and vegetables, which it received, accepted, and sold in interstate and foreign commerce.

A copy of the Complaint was served upon Respondent by certified mail on April 3, 2001. Respondent did not file an answer. The time for filing an answer having run, and upon motion of the Complainant for the issuance of a default order, the following Decision and Order shall be issued without further procedure or hearing pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §1.139).

Finding of Fact

1. Respondent is a corporation whose business address is 342 Massachusetts Avenue, Suite 500, Indianapolis, Indiana 46204-2132.

2. At all times material herein, Respondent was licensed under the provisions of the Act. License number 154994 was issued to Respondent on November 16, 1954. This license terminated on November 16, 1999, pursuant to section 4(a) of the Act (7 U.S.C. §499d(a)), when Respondent failed to pay the required annual renewal fee.

3. The Secretary has jurisdiction over Respondent and the subject matter involved herein.

4. As set forth more fully in paragraph III of the Complaint, during the period September 12, 1998, through September 15, 1999, Respondent failed to make full payment promptly to 79 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$1,935,386.99 for 604 lots of fruits and vegetables, which it received, accepted, and sold in interstate and foreign commerce.

Conclusions

Respondent's failure to make full payment promptly with respect to the transactions set forth in Finding of Fact Number 4 above, constitutes willful, flagrant, and repeated violations of section 2(4) of the Act (7 U.S.C. §499b(4)), for which the Order below is issued.

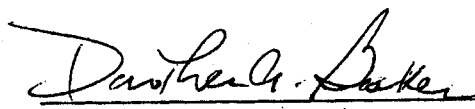
A finding is made that Respondent has committed willful, flagrant, and repeated violations of section 2(4) of the Act (7 U.S.C. §499b), and the facts and circumstances set forth above shall be published.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings after thirty-five days after service hereof, unless appealed to the Secretary by a party to the proceedings within thirty days after service as provided in sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R.. §1.139 and 1.145).

Copies hereof shall be served upon the parties.

Done at Washington, D.C.

This 20th of September, 2001


Administrative Law Judge